

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Government,

HONORABLE GEORGE CARAM STEEH

v.

No. 15-20652

D-3 EUGENE FISHER,  
D-4 COREY BAILEY,  
D-6 ROBERT BROWN,  
D-10 DEVON PATTERSON,  
D-13 ARLANDIS SHY,  
D-16 JAMES ROBINSON,  
D-19 KEITHON PORTER,

Defendants.

STATUS CONFERENCE HEARING

Monday, April 30, 2018

- - -

APPEARANCES:

For the Government:

CHRISTOPHER GRAVELINE, ESQ.  
Assistant U.S. Attorney

For the Defendants:

HENRY M. SCHARG, ESQ.  
On behalf of Eugene Fisher

JAMES FEINBERG, ESQ.  
On behalf of Robert Brown

BERTRAM JOHNSON, ESQ.  
On behalf of Devon Patterson

MARK MAGIDSON, ESQ.  
On behalf of Arlandis Shy

WILLIAM SWOR, ESQ.  
On behalf of James Robinson

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STEVEN SCHARG, ESQ.  
On behalf of Keithon Porter

Also appearing:

MICHAEL RATAJ, ESQ.  
On behalf of Quincy Graham

JEFFREY EDISON, ESQ.  
On behalf of Martez Hicks

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N O N E

Detroit, Michigan

Monday, April 30, 2018

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**THE CLERK:** Case Number 15-20652, Trial Group  
2, Eugene Fisher Corey Bailey, Robert Brown, Devon  
Patterson, Arlandis Shy, James Robinson and Keithon  
Porter, and we have Jim Feinberg on the telephone.

**THE COURT:** Okay.

**MR. GRAVELINE:** Good afternoon, your Honor.  
Chris Graveline for the United States.

**THE COURT:** Welcome.

**MR. SWOR:** William Swor on behalf of James  
Robinson.

**MR. H. SCHARG:** Henry Scharg on behalf of  
Eugene Fisher.

**MR. S. SCHARG:** Steven Scharg on behalf of  
Keithon Porter.

**MR. MAGIDSON:** Mark Magidson on behalf of  
Arlandis Shy.

**MR. JOHNSON:** Bertram Johnson on behalf of  
Devon Patterson.

**THE COURT:** Okay. So we're missing --

**THE CLERK:** Craig Daly.

1                   **THE COURT:** All right. Do you want to go  
2 ahead?

3                   **THE CLERK:** And Mr. Feinberg is on the phone.

4                   **MR. FEINBERG:** Yes, I am.

5                   **THE COURT:** This is set up as a status  
6 conference. Mr. Swor?

7                   **MR. SWOR:** Your Honor, this will be a little  
8 choppy because I was busy writing about it. I was going  
9 to do this in a formal fashion, but we have some major  
10 concerns in light of the series of articles that ran in  
11 the Detroit News last week.

12                   You know, there was evidence there. There was not  
13 evidence there. There were essentially confessions or  
14 what the government is going to argue is confessions,  
15 certainly statements against interest, and there was also  
16 a lot of material in the articles that were rank hearsay,  
17 gossip, speculation, government theory, whether proven or  
18 otherwise, accusations of conduct that is not charged in  
19 the indictment, and on behalf of Mr. James Robinson, I  
20 have been absolutely horrified, and as the series went all  
21 week, it was, you know, just one thing after another.

22                   I think it terribly prejudices the defendants. It  
23 certainly prejudices Mr. Robinson, and at a minimum, I  
24 would want to be severed from the -- obviously the death  
25 defendants are not going to consent to an adjournment nor

1       should they, but I want Mr. Robinson severed. I mean, if  
2       nothing else, the passage of time may help us, but  
3       certainly immediately in three weeks is immediate as far  
4       as I am concerned, and this thing is on -- not only in the  
5       paper on the Detroit News website, but I'm told that it's  
6       been on Facebook, on Instagram, on Snap Chat. So we don't  
7       know yet the scope, but it's horrid.

8               People are talking about it. People in church are  
9       talking about it, and they didn't even know that I was on  
10      the case. So the risk to Mr. Robinson is very real, and  
11      pictures are worth a thousand words. We saw so many  
12      pictures. There were graphics. The government says it  
13      did not provide the graphics that were used in the story.  
14      Well, they are there just the same, and -- and if the  
15      government did -- did not provide them, then the idea that  
16      the jury will be tainted by information that is not  
17      evidence or the jury pool, and it just really reinforces  
18      all the ugly stereotypes and prejudices.

19             I spoke with Mr. Graveline early in the week, and  
20      he assured me that the government had nothing to do with  
21      the creation of it, and I take him at his word, but that's  
22      not the issue here. I'm not asking -- at this point I'm  
23      not asking for a dismissal. If I find out otherwise, I  
24      may come back and change that position, but we can't go to  
25      trial -- I can't go to trial June 5th in the face of all

1 of this.

2 In addition to that, after our last pretrial here,  
3 Mr. Robinson who has been housed at Milan, was kept at  
4 Dickerson for awhile, and then inexplicitly shipped up to  
5 Sanilac. I didn't -- I didn't realize that he was sent to  
6 Sanilac. He was sent to Sanilac, and all of his material,  
7 his trial preparation material, his notes, his discovery  
8 stayed at Milan, because when I checked with the -- once I  
9 found out he was at Sanilac, I called the marshals and  
10 said what's going on? No. I found out that he was gone  
11 from Dickerson. They told me he was going to -- he had  
12 gone to Sanilac, and then I said, well how do I get the  
13 stuff, his stuff to get it over to him, and they said, we  
14 suggest you don't do anything, because this is only  
15 temporary. He may be getting moved.

16 He's still at Sanilac, and so I had to print out  
17 almost another complete set of discovery and get it up to  
18 Sanilac, except that he is still short of his notes. Our  
19 trial preparation has been significantly hampered, but  
20 that's just the disaster that happens in cases like this,  
21 although it is a disaster.

22 You've read the articles.

23 **THE COURT:** Actually, I haven't.

24 **MR. SWOR:** Well, I'm glad you haven't the  
25 articles.

1                   **THE COURT:** I've been busy.

2                   **MR. SWOR:** I had airplane time. So the  
3 articles go well beyond discovery, go well beyond  
4 evidence. The taint for the jury pool is unacceptable,  
5 given that the -- and the manner, the graphic manner in  
6 which it paints the four death defendants, death eligible  
7 defendants and the Seven Mile Bloods, and they found a  
8 catchy heading for each story, Death by Instagram, is not  
9 something jurors are likely to forget.

10                  **THE COURT:** I don't know what your experience  
11 has been, but mine is I'm always amazed how little the  
12 jurors know about coverage.

13                  **MR. SWOR:** If it were just -- if it were back  
14 in the good old days of print media, but we got here the  
15 web. We got Facebook. We got, like I said, Instagram,  
16 Snap Chat.

17                  Your Honor, on behalf of Mr. Robinson, I'm asking  
18 the Court to sever us, and I will be filing a motion for  
19 bond, and quite frankly, you know, this is not something  
20 that should be held against Mr. Robinson, and I'll deal  
21 with that in the bond motion, but I suppose the Court can  
22 find because of the circumstances that this clock should  
23 stop, that should not be -- the speedy trial clock should  
24 not be a reason to deny us severance, and it doesn't  
25 require the defendant's consent. There's nothing in the



1 Speedy Trial Act that -- and I don't know where that habit  
2 has come from, but I don't want to do this, getting into  
3 an argument with the government.

4 This is not about, you know, how the paper got  
5 ahold of these things, because that's not productive right  
6 now. That may be productive for another hearing, but for  
7 the immediacy, my client can't go to trial on June 5th in  
8 this environment, and he shouldn't go to trial with people  
9 that were really in different situations. The evidence is  
10 totally different, and if I filed a written motion, I  
11 would have done this a little more intelligibly, although  
12 we know there's always danger with me about understanding  
13 what I'm talking about it, but it should not go forward.

14 **THE COURT:** Okay.

15 **MR. H. SCHARG:** Your Honor, on behalf of  
16 Mr. Fisher, I understand exactly what Mr. Swor said, and I  
17 concur with him because Mr. Fisher is in the same  
18 situation. Mr. Fisher simply put, is being charged as  
19 warehousing weapons. He wasn't involved in any of the  
20 shootings or in any of the other violent crimes. The  
21 government charges that he, in fact, warehoused weapons at  
22 his house that were used in different offenses, but never  
23 put him directly participating in any of those crimes, and  
24 for the same reasons that Mr. Swor detailed, these are  
25 articles that have been extremely prejudicial to him and

1 his ability to be tried at this time.

2 The Court does have a remedy though. Even if the  
3 Court grants a severance to those defendants that are not  
4 death eligible, it's not creating another trial because  
5 you already have a third group trial scheduled for after  
6 the second group. So it's not creating a new trial. It's  
7 just placing those defendants that are -- were not death  
8 eligible into the third category, which would resolve all  
9 of the issues that I think we have in this case.

10 **THE COURT:** There's another element here, and  
11 that is for death eligible defendants, there has not been  
12 any indication from Justice whether they are going seek  
13 the death penalty or not. It has occurred to me that we  
14 may not hear from them given the state of affairs for  
15 D.C., and my expectation was that if we get to the trial  
16 and we have had not a response, then there's no death  
17 penalty for those defendants because will be --

18 **MR. H. SCHARG:** Right. But what I'm saying  
19 is in terms of death eligible that's because they are  
20 charged with more serious crimes than Mr. Swor's client  
21 and my client. I'm referring to them as death eligible at  
22 this time because they are charged -- even if they are not  
23 authorized, they are charged with violent crimes. They  
24 are charged with murders. They are charged with shooting  
25 an individual in front of his children, and he's going to

1       come in in a wheelchair. They are charged with these  
2       shootings at a parole office, at a baby shower. They are  
3       in a different class than my client and Mr. Swor's I  
4       believe, and the fact that my client is not being charged  
5       as being directly involved in any of these shootings or  
6       violent acts, put them in the separate category.

7               The news articles did what the government wouldn't  
8       be able to do at trial, which was to put them altogether  
9       in the minds of the jury.

10              Again, the death eligible defendants have a whole  
11       different agenda, and there is a remedy for this to put us  
12       in the last grouping, Group Number 3, which the Court has  
13       not -- I don't believe the Court has scheduled a trial  
14       dated for the third group.

15              **THE CLERK:** January 8th.

16              **MR. H. SCHARG:** January 8th.

17              **THE COURT:** Your argument is to keep the  
18       death eligibles in this group?

19              **MR. H. SCHARG:** Yes, in Group 2, and move the  
20       non-death eligible into the third grouping for the reasons  
21       that I've stated, and Mr. Swor stated.

22              **THE COURT:** Okay. At some point I'm going to  
23       want to hear from Mr. Graveline. Do you have reaction?

24              **MR. GRAVELINE:** Just doing the math, your  
25       Honor, I believe we have seven defendants in Trial Group

1 3.

2 **THE COURT:** Right.

3 **MR. GRAVELINE:** If we move people back, we're  
4 creating a trial group of potentially nine, if not 10  
5 people, which then necessitates yet another trial. So to  
6 say it's not going to create another trial, I think it  
7 would. We can all hope that we work out some pleas and  
8 things start working out, but that's the trial group that  
9 we would be creating for January.

10 In terms of the death penalty, I know it's been  
11 forwarded on out of the capital case unit up to the deputy  
12 attorney general, and they know of the May 10th plea  
13 cutoff, and so I'm hoping to have answers no later than  
14 May 10th.

15 **THE COURT:** Okay.

16 **MR. GRAVELINE:** That's the status of the four  
17 individuals who still face death eligible charges.

18 **THE COURT:** So from the deputy to the  
19 attorney general to --

20 **MR. GRAVELINE:** Those are the only two who  
21 review. So normally in this review process it goes to the  
22 capital case section. They review it. Once their review  
23 is done, it is forwarded to the deputy attorney general,  
24 and then from the deputy attorney general to the attorney  
25 general. So it's at the top levels right now, and that

1 was to have been accomplished by last Thursday.

2 **THE COURT:** All right. Thanks. Mr.  
3 Magidson?

4 **MR. MAGIDSON:** Thank you, Judge.

5 Well, I don't want to be redundant here. I echo  
6 the concerns of brother counsel. Mr. Shy is death  
7 eligible, and I spoke with him today just to get his  
8 input. They were -- obviously, he's detained, and he's  
9 aware of some of the news articles. He was not aware of  
10 the details. So I shared it with him. I brought him a  
11 copy of the headlines, and it's beyond headlines. It goes  
12 on to various jump pages of a lot of details, details  
13 which I questioned -- or he questioned as to whether or  
14 not this reporter, who is apparently an investigative  
15 reporter -- at least investigates one side -- was able to  
16 glean certain facts that went beyond the indictment and  
17 some of pleadings that were found, particularly since a  
18 lot of information in the first trial didn't come up much  
19 about some of the other defendants.

20 So the paper outlines like the key figures. So it  
21 tells us who the key figures are with pictures, and then  
22 it goes through Mr. Shy's -- what they call a rap sheet.  
23 Not rap song, but rap sheet -- and it talks about multiple  
24 arrests and multiple convictions in Michigan, West  
25 Virginia, and it leads somebody to think that this guy

1 must be the worst person around when, in fact, he was  
2 never sentenced as part of any of conviction to a day in  
3 jail or let alone prison. So it distorts everything.

4 So we find the timing unusual, this news breaking  
5 story about a case that's been pending for years, falling  
6 on the eve of trial after the government's -- you know,  
7 maybe I don't want to say less successful, but I'm sure  
8 the government was not pleased with the outcome of the  
9 first case, acquittal and hung jury, and on the eve of  
10 trial where people are death penalty eligible this.

11 So frankly, my client has been locked up so long,  
12 and I'm sure the Court is aware of his position in term of  
13 adjournments and things, he doesn't want an adjournment,  
14 but it's his position that the government has at least, if  
15 not sponsored this or encouraged this reporter from the  
16 Detroit News to publish this article, to gain a tactical  
17 advantage at the expense of Mr. Shy, and I don't know the  
18 remedy. I don't have a remedy short of having some sort  
19 of evidentiary hearing to see whether or not the  
20 government actually intended to do this, and to establish  
21 prosectorial misconduct, in which case the remedy would be  
22 dismissal of the indictment.

23 But short of that, I can't get a retraction. It's  
24 on the worldwide web in a million different ways, and  
25 Henry mentioned or Bill mentioned something about they

1 were talking about it in church. I just ran into  
2 people -- I'm in the Ford Building, and some of the  
3 people, just the workers in the building, talking about  
4 it, and just didn't know that I was involved in the case,  
5 and I heard them talking about it.

6 So it resinated at least with a number of people.  
7 Like the Court says, you're always surprise how little  
8 jurors are aware of what's going on, but for some reason  
9 this article with these salacious, if you will, facts  
10 involving detailed incidents, much of which are disputed,  
11 people have, I think, have adopted this and have  
12 internalized this.

13 So short of what I have suggested, I don't have a  
14 remedy. I do know that the people who are death eligible  
15 are certainly facing a more difficult challenge now than  
16 they did before.

17 **THE COURT:** All right. Thank you.

18 **MR. S. SCHARG:** Good afternoon, your Honor.  
19 Steven Scharg on behalf of Mr. Keithon Porter.

20 Your Honor, after reviewing the internet and the  
21 Detroit News section, my client was quite, quite upset  
22 because they have in this article, they mentioned that he  
23 was involved in the two shootings on May 1st and May 8th,  
24 and they made him look like he was a hitman in this  
25 conspiracy, and it's his position that -- both of our

1 positions is that we don't believe he would get a fair  
2 trial, and I don't know what the -- he does not want an  
3 adjournment of this trial date, but he's indicating to me  
4 based on this article, it's -- how could he get a fair  
5 jury? We don't know what the jurors actually really know,  
6 how they are feelings are regarding this situation, but it  
7 puts Mr. Porter in a horrible limelight as a result of the  
8 accusations and allegations that were made in these  
9 reports.

10 They had in the article about his prior  
11 convictions, about his brother, family member. They went  
12 into depth regarding Mr. Porter's participation with Billy  
13 Arnold, and we believe at this time there is no way that  
14 he can get a fair trial on June 5th.

15 **THE COURT:** Okay. Well -- yes.

16 **MR. SWOR:** The other problem is simply  
17 because of the graphical nature of the images, the  
18 stories, it will be harder for people who have seen to  
19 unremember. It will be -- it is possible that jurors will  
20 not recall the story until some of the graphics go up on  
21 the screen, and may not consciously remember, but  
22 subconsciously remember.

23 And the other problem that I simply have is that  
24 my client -- I mean, it is a real problem for us. First  
25 of all, he's an hour and half now at Sanilac. He's an



1 hour and a half away, and my schedule has not exactly been  
2 cleared for me to run back and forth.

3 **THE COURT:** When was he moved?

4 **MR. SWOR:** Roughly 10 days after our last  
5 status conference. So he's been up there almost a month,  
6 and I've been up to see him, and but I can't spend -- I  
7 got four clients up there. I mean, we're deprived of  
8 preparation material.

9 **THE COURT:** We have to get that cured  
10 obviously.

11 **MR. SWOR:** Obviously. The marshals have been  
12 trying. You haven't heard me yell about the marshals, and  
13 you know that I do.

14 **THE COURT:** Well, I'll certainly make inquiry  
15 after this hearing to see if we can get him moved to  
16 Milan.

17 **MR. SWOR:** He was at Milan, and that's where  
18 his stuff is. My concern is now that he's been gone long  
19 enough, that Milan will administratively pack everything  
20 up and mail it, and then we're in a whole different  
21 situation.

22 **THE COURT:** Okay.

23 **MR. SWOR:** Because then getting it back in  
24 will be a problem, but this is an absolute disaster.

25 **THE COURT:** Well --

1                   **MR. SWOR:** The timing is certainly horrible.

2                   **THE COURT:** Yeah. All right. Well, my take  
3 on this is that people in general are -- I was looking  
4 at -- I was looking at the one print copy that I had,  
5 which was on Sunday, maybe last Sunday in the Detroit  
6 News, and this is -- with the number of defendants, and  
7 the complexity of the case, it seems to me that someone  
8 could read that three times, to carefully read it three  
9 times, and after the passage of couple of days, couldn't  
10 name a person or attribute specific behaviors to an  
11 indivual.

12                   We have had a lot of high publicly cases in the  
13 district, and if you get a jury, a satisfactory jury in  
14 Kwame Kilpatrick's prosecution, I guess you can do it with  
15 just about any, and I never -- I didn't hear of any  
16 complaints about the jurors who were selected, and we have  
17 means to deal with the -- to deal with the publicity. We  
18 should undoubtedly ask questions in the juror  
19 questionnaire. We should caution them at the time that  
20 the questionnaires are received in the mail, not to do any  
21 investigation or access social media about the case, and  
22 people as a whole I think are pretty conscientious in  
23 following instructions that they get.

24                   I mean, you might be absolutely right in that this  
25 has received so much attention that the timing of the

1 trial has to be alter, but I think we only find that out  
2 when we get started with the selection process, and we  
3 find out what people have seen or heard or remember of the  
4 coverage even if they read it. They are not going to be  
5 able -- I'm pretty confident that we could fairly sort out  
6 the people who really have been impacted. I have had  
7 people discuss it in my presence as well. So I do agree  
8 with you that this got a lot of attention when it came  
9 out, but --

10 **MR. SWOR:** But your Honor, if you go to the  
11 website now, and I would invite the Court -- and excuse me  
12 for interrupting -- but I would invite the Court to look  
13 at it online as oppose to just looking at the print page,  
14 and looking at the segmented articles and the video that  
15 jumps -- I mean, this was -- there are television  
16 productions that would envy this, because as you go over  
17 them, the images flash and move, and we all studied how  
18 those experiments work, and it remains on the Detroit News  
19 website's main page. It is there, right there in a big  
20 bold black box. So it's not something that fades in time.  
21 It's there all the time.

22 **THE COURT:** Right, if people are accessing it  
23 and watching it. I mean, if we're instructing them at the  
24 time these questionnaires go out not to --

25 **MR. SWOR:** Damage has already been done

1 because it paints with such a broadbrush, and condemns  
2 anyone associated with the group. That's the problem. It  
3 pernicious.

4 **THE COURT:** Have you talked to your client  
5 about asking for a severance?

6 **MR. SWOR:** I spoke with his aunt who speaks  
7 to him everyday. I actually -- we already had a  
8 discussion about going forward in light of what happened  
9 here in the courtroom the last time and my concerns about  
10 that and --

11 **THE COURT:** You mean, just the client's  
12 expression of their determination to get the case tried?

13 **MR. SWOR:** It was little more than just a  
14 simple expression of determination. As you recall all,  
15 with all due respect to the client, this was a rowdy  
16 bunch, and they were disrespectful.

17 **THE COURT:** Right.

18 **MR. SWOR:** And when you get backed into a  
19 corner -- and so yes. The answer is yes, I have discussed  
20 severance with my client even before this came out, and he  
21 understands why it may be necessary, and as I said, the  
22 Speedy Trial Act does not require a client's consent. It  
23 requires a determination by the Court, and I think that  
24 given the options available -- and I really don't think  
25 there are seven defendants going to trial in January, and

1       neither does the government, nobody does -- and given the  
2       option that the Court has of taking a risk, we're taking a  
3       much smaller risk, I think the Court should err on the  
4       side of a smaller risk.

5               **MR. H. SCHARG:** I also spoke with my client  
6       directly, and he, Mr. Fisher, was one who took the  
7       initiative and requested that I file a motion for  
8       severance, and that was before the news articles, based  
9       upon the outburst and circus like atmosphere that occurred  
10      at the last pretrial.

11             As you recall, Mr. Fisher is on bond, and he sat  
12      at the defense table, and he had a front row seat of what  
13      was going on there, and at that time he voiced his fears  
14      to me about going to trial with the others who are death  
15      eligible and were sitting in the jury box, and that  
16      actually even before the articles came out, I conferred  
17      with Mr. Swor because I found out that he had voiced  
18      similar concerns.

19             So my client not only agrees, but he requests that  
20      there be a severance, and he be put in the third category.

21             One more thing, I agree with the Court  
22      wholeheartedly that when it comes to trial, that whoever  
23      read the articles won't remember names. They won't  
24      remember events, but they will remember Seven Mile Bloods  
25      being some really bad, dangerous dudes, the most

1 dangerous, and, you know, the Red Zone.

2 So they won't remember names. They won't remember  
3 events, but when you connect Red Zone and the baddest  
4 dudes, the worst violent gang in Detroit, and the fact  
5 that they -- that their names won't be published because  
6 of the court order, they put two and two together, and  
7 what they won't remember is almost more dangerous than  
8 what they do.

9 **THE COURT:** So we finished a trial recently,  
10 and I have the benefit of having talked to the jurors  
11 after that trial, and it was obviously they knew from the  
12 outset what they were dealing with. They had a general  
13 understanding of -- well, there were a couple of people on  
14 that jury that had a criminal justice background. So they  
15 undoubtedly educated the others, but they had it figured  
16 out. The skirting around the tables was used, but if  
17 anybody has any level of sophistication, they understand  
18 the -- they understood what the case was about. They  
19 had -- they were -- still they acquitted one of the  
20 defendants, and they were hung on other charges relating  
21 to the other defendants.

22 But I think we underestimate the jurors' capacity  
23 to be fair and to avoid -- I mean, we live in a period now  
24 where nobody agrees. Nobody agrees with anybody else.  
25 There's a lot of -- lots of leaders and few followers, I

1 think, these days, and I think that's reflected in the  
2 jury, the jurors that we end up to hear these cases.

3 So I just don't know what else we can do but to  
4 try to get a fair jury, and to be liberal in excusing  
5 those who have been exposed in a serious way, and probe  
6 with probing questions, I think we can assess your  
7 concerns with the jurors' background without adjourning  
8 and having them to sit in custody for another year or two  
9 before case is tried.

10 So I hope we don't have seven going to trial  
11 because I think it's going cumbersome, and I haven't asked  
12 for an estimation of the time required.

13 **MR. GRAVELINE:** Just in response to Trial  
14 Group 3, we know there's three for sure going, and that's  
15 the three who were just had a hung jury. I can tell the  
16 Court, I've had no conversation with Mr. Martez Hicks'  
17 attorney. Jeffaun Adams, who is the brother of Jeffrey  
18 Adams, I think is heading to trial. So there's five for  
19 sure in Trial Group 3, and so I am concerned about the  
20 numbers in terms of the two trial groups.

21 Yes, depending on the outcome of this case, that  
22 might change, but if there's a similar result or  
23 acquittal, then guess what? I would imagine that we will  
24 have a full seven or eight people come January as well.

25 So to sit here and say well, depending on what the

1 result is, we don't know what the result will be, and so  
2 that's the difficulty the government finds itself in right  
3 now just in terms of -- from the government's viewpoint, I  
4 think the Court is correct. We don't know the impact that  
5 any of these stories have had until we get actual jurors  
6 in here, we see what they put on their questionnaire, we  
7 talk to them in voir dire, and then we're actually able to  
8 assess what impact whatsoever these articles have had.

9 And just for complete understanding as well, I  
10 mean, the series wrapped up with Michael Rogers being  
11 acquitted, and if you go online, there's an interview of  
12 Michael Rogers as he walks out the courthouse. So it's  
13 not as if this article is all one-sided as well, and so it  
14 lays out what the defendants' arguments were. It includes  
15 the fact that Mr. Rogers was acquitted. We just don't  
16 know.

17 So I think what we have to do is go through the  
18 voir dire process, and we'll be in a much better position  
19 to judge what, if any, impact it had, and what any remedy  
20 would be because of that impact.

21 **THE COURT:** What's your estimation of the  
22 time required for trial if all of these defendants now  
23 scheduled?

24 **MR. GRAVELINE:** I'm planning on two and a  
25 half months, your Honor. So approximately 10 weeks.



1                   **MR. RATAJ:** Your Honor, may I be heard  
2 briefly? I was not officially invited to the party, and  
3 it has to do with the trial date in January with Group 3.  
4 I mean, I've heard Mr. Graveline say that. I mean, is  
5 that a sure thing that we are in the third group?

6                   **THE COURT:** We haven't picked a date.

7                   **MR. GRAVELINE:** The only reason I say that is  
8 that that's next, Trial Group 3, and I have a month and a  
9 half, two month long trial in front of Judge Michelson  
10 starting October 5th. So between the time that Trial  
11 Group 2 is done here in August, I have a six to eight week  
12 long trial in front of Judge Michelson starting  
13 October 5th.

14                   **MR. RATAJ:** I guess my question is that -- I  
15 mean, is Mr. Graveline correct, your Honor, that myself,  
16 Mr. Machasic and Mr. Arnone, are we with Trial Group 3  
17 now?

18                   **THE COURT:** I have not made that decision.

19                   **MR. RATAJ:** I didn't think you did. That's  
20 why I asked. I think I got the answer, the Court has not  
21 made that decision.

22                   **THE COURT:** No, I haven't. I haven't decided  
23 whether I'm going to be around for January and February  
24 and March again for this trial. I'm getting too old for  
25 this.

1                   **MR. RATAJ:** Sounds like you're a little under  
2 the weather.

3                   **THE COURT:** I am.

4                   **MR. SWOR:** Point of information, I already  
5 advised your staff, but that week that I alerted the Court  
6 about my family, it is now become compulsory because I'm  
7 hosting a wedding that week. I didn't get to vote on it.

8                   **THE COURT:** This is when?

9                   **MR. SWOR:** This is going to take 10 weeks.

10                  **THE COURT:** Okay. Mr. Machasic?

11                  **MR. MACHASIC:** If I may be heard?

12                  **THE COURT:** Sure.

13                  **MR. MACHASIC:** I am fairly confident that  
14 whatever group we end up in, will follow the same  
15 procedure as Group 2.

16                  Given the Court's ruling, the Court has not placed  
17 an order for a semi-anonymous jury, and in that we are  
18 prevented from looking at social media postings of  
19 potential jurors.

20                  Given this series of articles -- and I  
21 wholeheartedly disagree with the government that this was  
22 some evenhanded treatment -- this was -- I mean, you want  
23 to talk about a hit piece, this was a hit piece that did,  
24 you know, cursory lip service to fairness in covering both  
25 sides, but that was only cursory.

1 I would like the Court to -- actually, I move that  
2 the Court amend the order impaneling a semi-anonymous  
3 jury, to provide the names to defense counsel of the  
4 potential jurors -- and there can be a protected order  
5 that goes along with that regarding further disclosure --  
6 but at this point I think we would be entitled to look at  
7 social media for potential jurors to see if they have  
8 commented about this case, posted about it. I understand  
9 that you can link. So you can link and further distribute  
10 these articles. All of these sites work together so that  
11 you can pull from one or another. You can take the  
12 article from the Detroit News website, and post it to  
13 your -- I know it does it for Facebook. I'm not sure it  
14 does it for some of the other social media sites. You can  
15 Twitter it.

16 But certainly at this point under these  
17 circumstances, given the fact that the Court has decided  
18 that we should move forward and see if we can actually get  
19 a fair and impartial jury, this is a necessary step in  
20 order to guaranty that we have the best shot at a fair and  
21 impartial jury, and so on behalf Mr. Adams, I would move  
22 that the Court amend that order to then provide the names  
23 under protection to defense counsel only, to allow us to  
24 then go and find out if people have linked, post or  
25 commented about these articles.

1                   **THE COURT:** Okay. Mr. Graveline?

2                   **MR. GRAVELINE:** I would just ask the Court, I  
3 would like to take a look what Judge Edmunds did in the  
4 Kwame Kilpatrick case to see what they fashioned in terms  
5 of the semi-anonymous jury.

6                   I think the Court kind of hit the nail on the head  
7 before when you talked about that we have had high profile  
8 cases in this district before, the underwear bomber, Kwame  
9 Kilpatrick. If that's something that Judge Edmunds and  
10 the parties agreed to, I think that would be instructive.  
11 I also think how other courts within the building have  
12 done that same thing. I would just ask for a day or two  
13 to see what protections were in place during that jury  
14 selection as well. It doesn't strike me as out there.  
15 It's just I would like to take a look how that's been  
16 treated before.

17                   **THE COURT:** Okay.

18                   **MR. RATAJ:** I was in that case, Judge. We  
19 fought for that option, but I believe we were denied. So,  
20 you know -- but I think, you know, that was like 4-5 years  
21 ago, and I can tell you that -- I can told you that this  
22 article even appears as an advertisement on Instagram,  
23 where if you're on Instagram, it pops up Death by  
24 Instagram, and you can go to the link, and go to the  
25 series of stories. It is popping up as an ad. So it's

1 all over the place. I was working out at a gym yesterday,  
2 and there's not many bright people in this gym, and they  
3 even read the article and commented on it.

4 **MR. EDISON:** Good afternoon, your Honor.  
5 Jeffrey Edison on behalf of Martez Hicks, who is in the  
6 third group, and I, after learning of this issue that  
7 brother counsel was bringing to this Court's attention, I  
8 felt that it was necessary to at least appear, and given  
9 how fast and quickly technology is evolving as we speak  
10 today in April, it may certainly be different by December,  
11 and so I would join brother counsel's request for a  
12 semi-autonomous jury, and I know that you have to go  
13 through another trial in June. So just in anticipation of  
14 our trial in January, we would join in that request.

15 **THE COURT:** Okay. Thank you. All right. I  
16 do think for the reasons that I discussed earlier that --  
17 and recognizing that we got another couple of -- do we  
18 have a couple of months or a month?

19 **MR. GRAVELINE:** Approximately five weeks from  
20 tomorrow.

21 **THE COURT:** I would encourage you to focus on  
22 the jury questionnaire, and how we approach the problem in  
23 connection with the voir dire to fare out people who may  
24 have -- and I suspect there will be some who will, if for  
25 no other reason, to get out of jury service, indicate that

1 they have been affected by the coverage. But I think we  
2 got a lot of skillful people in this room, not including  
3 me, and you'll have an opportunity for free rein of  
4 questioning in connection with this publicity, and I think  
5 it can be dealt with, and if it can't be, then we --  
6 there's nothing to say that we have to continue with voir  
7 dire if we're running into a lot of people who acknowledge  
8 reading the material or discussing the material, but as I  
9 also said, I think the jurors have evidence that of pretty  
10 great capacity for in most cases following instructions  
11 from the court, and -- go ahead Mr. Swor.

12 **MR. SWOR:** I'm just -- you know me I can't  
13 sit still. Obviously, my client, death eligible, the cost  
14 of being wrong is almost irreparable, because for the four  
15 death eligibles, if you -- if we start, and then we  
16 suddenly can't find a jury, then all of sudden the  
17 government has got another shot at making not only death  
18 eligible, but death defendants, and that's a prejudice  
19 that I think that we have all have to be aware of, the  
20 cost of delay.

21 You know, my client -- I was going to say the cost  
22 of delay to him, give him bond. He's not sitting in jail  
23 another year, and he's not accused of any of the  
24 murders -- and we'll get into that at the bond hearing --  
25 but I don't think -- well, you made your ruling, but I

1 just want to point that out that I think we have to be  
2 careful.

3 **THE COURT:** I think we do too, and so have  
4 you collaborated at all on the jury questionnaire?

5 **MR. GRAVELINE:** We have, your Honor. I think  
6 it is down to one question. Now that was before any of  
7 this popped up. So I think it's been Mr. Daly who's  
8 taking the lead on that in conversations with me. We're  
9 down to one question that quite frankly, the government is  
10 objecting to the inclusion of that question. We tabled  
11 that for a couple of weeks since we knew we had a little  
12 bit of time before the jurors were coming in in mid-March  
13 (sic). So that was on the to do list this week, at least  
14 for me to reach out to Mr. Daly and talk about what were  
15 we going to do with that question, and maybe also what, if  
16 anything, anyone wants to have included about this.

17 It strikes me that touching upon how much people  
18 have viewed this particular article probably should be an  
19 in person thing rather than a juror questionnaire thing,  
20 but I will also leave that up to defense counsel. If we  
21 can craft some questions, I'm open to discussion. It just  
22 strikes me -- that's my initial thought on it, probably  
23 better for in person voir dire than on the jury  
24 questionnaire. The jury questionnaire asks what newspaper  
25 do you get your information from in a pretty benign way.

1 So we'll probably know who reads or does not read the  
2 Detroit News. That will be helpful to us, but like I  
3 said, I'll be open to the suggestion of what's included.

4 **THE COURT:** That could be helpful, although  
5 if what I'm hearing correctly, it's coming from a lot of  
6 different sources that repeat the same material.

7 **MR. GRAVELINE:** That's right, and I think we  
8 can only fare that out once we start understanding who  
9 might or may. For example, the example that Mr. Rataj  
10 gave in terms of Instagram. I'm not sure if Instagram is  
11 running that because it's name is listed in it or because  
12 you clicked on it before.

13 So sometimes in Facebook, they monitor what  
14 articles you put down before, and the running screen on  
15 the right hand side will suggest other articles that you  
16 may or may not be interested in. So it might depend on,  
17 you know, is this something that Instagram pushed out to  
18 all of its users or is it suggesting the article because  
19 you read one of the previous eight articles.

20 And so that's why I'm saying is I think at least  
21 my initial reaction is, I think that's an in person voir  
22 dire as oppose to -- I don't know how we craft enough  
23 questions to ask about this or that. I think the initial  
24 juror questionnaire as crafted right now will give us  
25 clues, someone gets their news from the Detroit News,



1 somebody gets their news from social media, at least  
2 enough then to know that we need to be prompted that this  
3 is somebody we might need to dig in a little bit more on  
4 in terms of our questioning.

5 **THE COURT:** Right. I don't have a problem  
6 with dealing with in the courtroom with voir dire, but  
7 the -- but if we have the opportunity to head off jurors  
8 researching in preparation in anticipation of their big  
9 day in court, we should probably include a warning to  
10 them.

11 **MR. GRAVELINE:** Absolutely. If I understand  
12 the process of the court, they are called in, and they are  
13 told to fill out the questionnaire in person here. So I  
14 think if the Judge wants to be there, if defense counsel  
15 wants to be there, but if the Court instructs them, you  
16 know, please understand -- you know, we don't have to  
17 mention this particular article. So just say, please  
18 understand, you're now a juror in this case. You should  
19 not do any internet research on a case. You should not do  
20 any of this. Not particularly flagging that, I think  
21 that's a good and proper instruction that they should  
22 receive, the entire jury pool when they come in to fill  
23 out the jury questionnaire, and we can work on crafting a  
24 statement for the Court to read to that effect as well.

25 So I'm open to all of those possibilities, and I

1 think it would be wise to do that.

2 **MR. MAGIDSON:** The jury, when they come in as  
3 a pool, are they informed of the case?

4 **MR. GRAVELINE:** Yes. So the jury  
5 questionnaire, like Page 2 says, this is a racketeering  
6 case involving the Seven Mile Bloods, particularly these  
7 seven defendants with these type of crimes.

8 **MR. MAGIDSON:** I think as long as they are  
9 going to be informed of the case, then there should be a  
10 general question, has anybody heard of this case without  
11 being specific as to where or what because there are so  
12 many sources, so at least we can flag that right away.

13 **MR. GRAVELINE:** I think there is a question  
14 that goes to that, have you heard of the Seven Mile Bloods  
15 before? Have you had problems with the Seven Mile Bloods?

16 So without taking up too much more of the Court's  
17 time, maybe we all should take a look at the juror  
18 questionnaire, and then we'll come back to the Court.

19 **MR. H. SCHARG:** But Chris and I and Bill were  
20 on the Atari case in front of Judge Roberts, and I believe  
21 that we were all summoned to be here when the jury filled  
22 out their questionnaires. We were in the courtroom, and  
23 they had monitors -- television monitors while Judge  
24 Roberts went in the jury room and admonished them about  
25 not to do any pretrial research, et cetera, et cetera.

1                   **THE COURT:** This was at the time they are  
2                   filling out the questionnaire?

3                   **MR. H. SCHARG:** Judge Roberts went in there  
4                   before they filled out -- you know, as an introduction  
5                   before they started to fill out their questionnaires, and  
6                   defense counsel and the government were in the courtroom  
7                   watching on monitors as Judge Roberts admonished them  
8                   about any type, such as, pretrial research, et cetera, et  
9                   cetera, and then left the room.

10                  **THE COURT:** This was all on the record?

11                  **MR. H. SCHARG:** Pardon me?

12                  **THE COURT:** Was that all on the record?

13                  **MR. H. SCHARG:** Yes. Judge Roberts left  
14                  before they initiated going through the questionnaires,  
15                  and the perspective jurors were free to leave when they  
16                  completed their questionnaires.

17                  **THE COURT:** Okay. That sounds like a pretty  
18                  good way of approaching it.

19                  **MR. JOHNSON:** Judge, I would just like to add  
20                  that I concur with all of the arguments of counsel, but I  
21                  had conversation with Mr. Graveline at the outset, and one  
22                  thing we did agree on, I believe that there should be some  
23                  type of remedy. I don't know what that is, but I think we  
24                  should work together to fashion some sort of process in  
25                  the selection of this jury that may come down to some

1 individual voir dire after we fare out where that may be  
2 useful.

3 I think the trial that you heard has demonstrated  
4 that there is a thin line between some of the guilt or  
5 innocence of some of these parties. Particularly I'm  
6 arguing for Devon Patterson, who I consider with respect  
7 to sitting next to death eligible defendants, that he may  
8 be a smaller guy when you start talking about that thin  
9 line, but the spillover from this prejudice is so great,  
10 that I think that it could determine the guilt or  
11 innocence of some of these non-death eligible defendants.

12 So I would ask for some sort of consideration or  
13 some degree of individualized voir dire if, in fact, we  
14 could work that in and if, in fact, the government, like  
15 me and Mr. Graveline, spoke about would agree on some sort  
16 of process.

17 **MR. RATAJ:** If I may just finish this up,  
18 Judge, because I was in the Atari case too, and my  
19 colleagues and Mr. Graveline can refresh my memory, but I  
20 believe the voir dire was conducted individually.

21 **MR. SWOR:** We had individual --

22 **MR. RATAJ:** We had individual voir dire.  
23 That maybe something that the Court may want to consider  
24 as well.

25 **THE COURT:** Right.

1                   **MR. SWOR:** I assume --

2                   **MR. RATAJ:** So as a pool, the rest of the  
3 people don't get poisoned if somebody goes off the rail.

4                   **MR. SWOR:** In other words, when you're saying  
5 "individual," we brought them in individually.

6                   **MR. JOHNSON:** That's what I was speaking  
7 about.

8                   **THE COURT:** Right. How long did that take?

9                   **MR. S. SCHARG:** It took us three days.

10                  **THE COURT:** I would be willing to do that.  
11 That probably makes sense.

12                  **MR. RATAJ:** Actually Judge Roberts put a  
13 table right in front of the box, sat there, and we were  
14 all sitting around, and the person was like in front of  
15 them.

16                  **THE COURT:** Okay. I don't know that I'll do  
17 that. In Macomb County we had Judge Chrzanowski, who  
18 didn't want to be on that bench at all. She would be out  
19 mingling with the people. Very nice lady.

20                  I'm going to be at the Sixth Circuit Conference  
21 during the period when they are filling out their  
22 questionnaires, and --

23                  **MR. GRAVELINE:** I think we could have Judge  
24 Hood do it. I mean, she is the chief judge. That gives  
25 another veneer of hey, this is pretty common type of court

1 practice. I'm the chief judge. I'm here welcoming you  
2 here. Please know that you need to take your  
3 responsibilities seriously. Don't do any research. I  
4 think if the defense doesn't have any objection, I think  
5 Chief Judge Hood --

6 **THE CLERK:** She's probably going to be there.

7 **THE COURT:** We usually have a couple that  
8 don't attend.

9 **MR. GRAVELINE:** So we'll see who's available.

10 **MR. H. SCHARG:** There's always the magistrate  
11 judge.

12 **THE COURT:** Okay. All right. Sounds good.  
13 All right. So nothing new about the death authorization  
14 other than it's at the assistant AG?

15 **MR. GRAVELINE:** That's correct. I hope --  
16 and they know of the deadline before the plea cutoff. So  
17 I hope to have an answer.

18 **THE COURT:** Okay. So if you don't hear by  
19 the time the trial is to start, do you agree that we  
20 proceed without the death penalty, right?

21 **MR. GRAVELINE:** I never heard of that. I've  
22 never done any research on that. I would imagine -- I  
23 would get myself in trouble saying these things -- I  
24 imagine that would constitute some sort of waiver on the  
25 Department of Justice.

1                   **MR. SWOR:** Jeopardy attaches.

2                   **MR. GRAVELINE:** Right. It would strike me,  
3 if you're not saying it that you're affirmatively doing  
4 it, then that would be some type of waiver. I say all of  
5 that, I've never heard of that happening, and I don't  
6 know, but I'm going to just stop right there, but we will  
7 have an answer before this start starts one way or the  
8 other.

9                   **THE COURT:** All right.

10                  **MR. GRAVELINE:** I mean, when I say that, they  
11 know of the plea cutoff. They know when the plea cutoff  
12 is in this case.

13                  **MR. MAGIDSON:** Will it be a waiver then if we  
14 don't have it by the plea cutoff?

15                  **THE COURT:** I would like to set an earlier  
16 date.

17                  **MR. GRAVELINE:** That's why -- I'm going to  
18 back up. I'm going to back up everything that I just  
19 said. I didn't know the operative facts on that. I've  
20 never heard of that happening. I understand the  
21 ramifications of everybody. I've informed them of the  
22 plea cutoff.

23                  **MR. MAGIDSON:** Perhaps the Court can set that  
24 date.

25                  **MR. GRAVELINE:** I believe that's the plea

1 cutoff, and so all I'm saying, I will inform them. They  
2 know what the dates are, and it would strike me that --  
3 let's say for example, that we don't hear anything by May  
4 10th, but they come back on May 17th and say we are going  
5 to authorize on a particular defendant, it would strike me  
6 then that person would be able to sever. We would sever  
7 them out and figure out what we're doing with them like  
8 Billy Arnold. If they came back on May 17th and said  
9 we're not seeking the death penalty on this person, it  
10 would strike me at that point that if this person is still  
11 interested in some type of plea negotiation with the  
12 government, and wants to enter into some dialogue about a  
13 number of years, a charged plea at that point, that we  
14 would still be open to it if the Court is still open to  
15 it.

16 And so without doing any research, not knowing --  
17 I've never heard of the Department of Justice beginning a  
18 trial and not saying yea or nay. That's why I don't want  
19 to speculate about some type of waiver, but they  
20 understand what May 10th is. They understand that it is  
21 the plea cutoff, and they understand that's the timeline  
22 that we're operating under. They have moved expeditiously  
23 in Washington D.C. upon receipt of everyone's materials,  
24 and I anticipate we will have an answer one way or the  
25 other before May 10th.



1                   **MR. H. SCHARG:** One more wrinkle for Bill and  
2 I, the possibility of Washington authorizing the death  
3 penalty on one of the four defendants right before our  
4 trial, and that hits the news. That's why I wish the  
5 Court would consider moving us to the third trial group to  
6 avoid further harm and prejudice.

7                   **MR. GRAVELINE:** But we don't know that yet.  
8 We'll cross the bridges as we cross the bridges I think.

9                   The problem that -- I understand what Mr. Scharg  
10 and Mr. Swor are arguing in terms of their defendants,  
11 although I tend to disagree -- they are involved in  
12 violent acts. I mean, Mr. Robinson is charged during the  
13 shooting of Mr. Canady and Anthony Bowen at the baby  
14 shower. Mr. Fisher is charged as aiding and abetting the  
15 shooting on May 10th, and storing the weapon that was used  
16 on May 1st, May 8 and May 10th.

17                   So the problem is we have a pretty full Trial  
18 Group 3, even assuming that the other three are not in  
19 Trial Group 3. I think we have to just keep moving  
20 systematically, and then just take it as it comes. And so  
21 we'll see what the next week and a half brings, and I  
22 think the Court will be in a better position to make the  
23 decisions as necessary.

24                   **THE COURT:** When the Justice Department did  
25 respond by directing the U.S. Attorney to pursue the death

1 penalty of the first guy, I don't think there was a line  
2 written about it.

3 **MR. SWOR:** Oh, yes there was. Maybe you were  
4 in different town that day or something.

5 **MR. GRAVELINE:** Well, I think that's also  
6 illustrative of -- the people in this room, the 12 of us  
7 lawyers, we know every word that's written about our  
8 cases. I'm not sure until we get a jury in here, that  
9 they will be as oh, yeah. I would imagine if we brought  
10 in 100 people, if you ask if you know about the Justice  
11 Department seeking the death penalty against anyone, I bet  
12 we would get a lot of shrugged shoulders that they don't  
13 know. I think we need to continue to consistently move  
14 through it, and we'll find out where we end up here.

15 **THE COURT:** All right. We'll do our best.

16 What else do we've got pending? Mr. Graveline  
17 asked to us consider going 9 to 1:30 instead of nine to  
18 one like the first time. We also have the option of -- if  
19 it makes it easier for jurors to -- I think we had planned  
20 a week off in August if it goes that long.

21 **MR. GRAVELINE:** We definitely had the week of  
22 the July 4th off. I haven't heard about a week in August.

23 **THE CLERK:** The week of August 6th, if it  
24 goes that far.

25 **MR. GRAVELINE:** Maybe what we could consider

1 is, depending on Mr. Swor's schedule, the end of --

2 **THE CLERK:** What are your dates?

3 **MR. SWOR:** I'll be gone the last week of  
4 July.

5 **MR. GRAVELINE:** Well, before we get to  
6 schedules and we have a final pretrial with that, and I  
7 think we will have all of the defendants here, but in  
8 terms of speaking with Jill before the hearing, I think  
9 there's two pending motions for bond, Mr. Graham and  
10 Mr. Jeffaun Adams. I ask to have until Friday to respond  
11 to those, if that's fine, this Friday, May 5th.

12 I believe there's a motion pending, concerning  
13 precluding the government from recall of certain  
14 witnesses, i.e., Agent Ruiz multiple times throughout the  
15 trial. I would ask the Court if you would consider giving  
16 us at least until next Wednesday to respond to that  
17 motion, and I think that's all of the pending motions  
18 right now, and then have our final pretrial on May 10th.

19 The only other item that I want to bring the  
20 Court's attention, I know the discussion right now is to  
21 use Judge Tarnow's courtroom, and I know there's not a  
22 whole bench of very good options on this. If we go with  
23 seven defendants, I think that courtroom could be pretty  
24 tight, especially where the witness box is seated, and I'm  
25 not sure if this something where we need the marshals --

1 as I remember Judge Tarnow's courtroom, it's very similar  
2 to yours, but shorter, and the witness box is right  
3 against the defense table. If we have all seven  
4 defendants, I would minimally ask the Court to consider  
5 moving the witness box to the other side of the room or up  
6 against the court's -- I have concerns about witnesses  
7 testifying six inches away from some of the people they  
8 might be testifying against. That's an issue.

9 I don't think they are available. I just point  
10 out that, for example, Judge Borman and Judge Lawson, I  
11 know we've done multi-defendants cases up there, and the  
12 jury box -- or the witness box is on the opposite side.  
13 Like I said, I don't think they are available, but it is  
14 just something to put out there that I think we need to  
15 consider about placement of the witness box, how much room  
16 needs to be done if it is Judge Tarnow's courtroom that we  
17 will be using.

18 **THE COURT:** We're going to have a lot of  
19 difficulties with that, given the -- you know, all of the  
20 judges on this floor are going to be evicted and will be  
21 scrounging around for courtrooms.

22 **THE CLERK:** Judge Lawson's is not available.  
23 We asked.

24 **THE COURT:** So who is the other one?

25 **MR. GRAVELINE:** Judge Borman.

1                   **THE CLERK:** They are pairings us up with  
2 different judges, and it is not hi-tech either.

3                   **THE COURT:** We can explore the possibility.

4                   **MR. GRAVELINE:** I know we're still five weeks  
5 out from trial, but that's concern when I heard it was  
6 Judge Tarnow's. That's a tight courtroom where the  
7 witness box located.

8                   **THE COURT:** Okay. All right. So deadlines  
9 for responding to the two motions is reasonable, and we'll  
10 address the issues --

11                   **MR. GRAVELINE:** So I mean, we have a final  
12 pretrial -- the plea cutoff is May 10th, and so I figured  
13 that was the final pretrial.

14                   In terms of Mr. Rataj's client Mr. Graham and the  
15 bond, I think we have a status conference set for May  
16 22nd. Maybe that would be a good time by the time we  
17 respond, if he wanted to file a reply, we can do it on May  
18 22nd, the bond hearing.

19                   **THE COURT:** Mr. Rataj?

20                   **MR. RATAJ:** Whatever your Honor sets.

21                   **THE COURT:** Okay. We'll do it that way.

22                   **MR. GRAVELINE:** Then with Jeffaun Adams I'm  
23 not sure.

24                   **THE COURT:** Okay. All right. If we hear in  
25 the meantime from DOJ --

1                   **MR. GRAVELINE:** As soon as I hear, everyone  
2 will hear.

3                   **THE COURT:** Should we reconvene again?

4                   **MR. GRAVELINE:** Sure, if it changes the  
5 dynamics at all.

6                   **THE COURT:** All right. During jury  
7 selection, we'll be doing that all day until we get a jury  
8 selected, and as it relates to nine to 1:30 or nine to  
9 one, do you have a preference?

10                  **MR. H. SCHARG:** Is the option 8:30 to one?

11                  **MR. GRAVELINE:** The only concern with 8:30 is  
12 usually jurors and child drop off to school, especially if  
13 we get somebody from St. Clair County or Washtenaw County.

14                  **THE CLERK:** It's summer.

15                  **THE COURT:** Daycare would be the only --

16                  **MR. GRAVELINE:** We can be flexible, a five  
17 and a half trial day, and then leave it up to what works  
18 best for the Court, jurors and everyone.

19                  **THE COURT:** The other option that I've never  
20 tried, but I've been told by other judges where it seems  
21 to work well with them, is to go Monday through Thursday  
22 and take Friday off okay each week. I'm happy to go  
23 whatever you all agree on, and so we'll do the shorten  
24 trial day, and just have to figure the preplanned vacation  
25 problems.

1 All right. Anything else?

2 MR. GRAVELINE: Nothing from the government,  
3 your Honor.

4 MR. SWOR: No.

5 MR. H. SCHARG: No.

6 THE COURT: All right.

7

8 (Proceedings concluded.)

9 - - -

10 C E R T I F I C A T I O N

11 I, Ronald A. DiBartolomeo, official court  
12 reporter for the United States District Court, Eastern  
13 District of Michigan, Southern Division, appointed  
14 pursuant to the provisions of Title 28, United States  
15 Code, Section 753, do hereby certify that the foregoing is  
16 a correct transcript of the proceedings in the  
17 above-entitled cause on the date hereinbefore set forth.

18 I do further certify that the foregoing  
19 transcript has been prepared by me or under my direction.

20

21 s/Ronald A. DiBartolomeo  
22 Ronald A. DiBartolomeo, CSR  
Official Court Reporter

May 23, 2018\_  
Date

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